

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION

ELITE LOGISTICS, INC.

Employer

and

Case 17-UC-243

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL No. 245

Petitioner

DECISION, ORDER AND
CLARIFICATION OF BARGAINING UNIT

The Employer, Elite Logistics, Inc., runs warehouses and distribution operations and employs warehousemen and drivers based in Springfield, Missouri, the only facility involved in this case. The Petitioner, International Brotherhood of Teamsters Local No. 245, represents the warehouse and distribution employees, including the inventory control (WRAPS)¹ clerks and the drivers, at this facility.

The Petitioner seeks to clarify the bargaining unit by including inventory control clerks Mike Roper and Steve Ward, contending that they share a community of interest with inventory control (WRAPS) clerks whom both parties agree are part of the unit. The Employer contends that the two employees in question are office clerks whose interests more closely parallel those of office clerical employees who are excluded from the unit, that the positions in question pre-date the current collective- bargaining agreement, have been excluded by the parties, and cannot now be clarified into the unit.

¹ Warehouse Retrieval and Put-away System. Inventory control (WRAPS) clerks are inventory control clerks, and will be called WRAPS clerks in this decision.

I find that the two inventory control clerks in question perform unit work and are included in the unit. This conclusion is based upon: (1) bargaining history and (2) an analysis of the work in question.

1. Bargaining History

The Petitioner has represented the warehouse and distribution employees based at the Springfield facility for more than 40 years. In 1994, when Associated Wholesale Grocers (AWG) owned and operated the Springfield facility, an election was held in which warehouse inventory control clerks were added to the unit. The parties then agreed in writing to include the classification of “inventory control clerks” in the unit. The document also set forth the names of the current inventory control clerks. In the 1995 to 1997 collective-bargaining agreement, the term “inventory control (WRAPS) clerks” was used to describe the inventory control clerks included in the unit. The 1997 to 2000 agreement continued use of the same language.

During the 1997 to 2000 contract term, the Petitioner filed three grievances alleging that AWG was assigning unit inventory control work to non-unit office clerical employees and to management interns. These grievances were not resolved before the identity of the employer changed about the beginning of June 2000.

A labor dispute occurred at the Springfield facility in April and May 2000. The dispute was resolved when the Employer took over operation of the warehouse and the distribution operations and recognized and bargained with the Petitioner. About June 3, 2000, a Memorandum of Agreement and a Memorandum of Understanding went into effect between the Employer and the Petitioner incorporating and modifying the 1997 through 2000 collective- bargaining agreement between AWG and the Petitioner.

These memoranda did not change the recognition provision which included inventory control (WRAPS) clerks in the unit and excluded office clerical employees.

It appears that, before the labor dispute, there was no inventory control clerk position such as that occupied by Roper and Ward. Roper was hired in mid-April 2000 during the labor dispute and performed work of the WRAPS clerks and some keypunching. He was given the title "Inventory Control Clerk." He took a few days off at the end of the dispute, and then continued working in the manager's office performing computer inventory control work, and doing some of the warehouse inventory work that he had done during the labor dispute. The Employer transferred Ward from shipping into the inventory control area in August 2002 to do the same kind of work as Roper.

It appears from the record that the Petitioner became aware that Roper and Ward were performing these warehouse inventory functions 2 to 3 months before it filed this petition on February 11, 2003. The Petitioner contends that the Employer did not notify it of the creation of the inventory control clerk position. The Petitioner argues that the unit should be clarified to make clear that these two inventory control clerks and their work are included in the unit.

2. The Work in Question

Inventory control clerks Roper and Ward work in the manager's office doing inventory control computer work. They also work in the warehouse, utilizing computer reports, doing counts and location checks, and double-checking the counts of others. The main function of these clerks, and the inventory department in general, is to keep track of the location of goods in the warehouse and the quantity of goods

coming in, going out, and remaining. Witnesses estimated that Roper and Ward spend from 50% to 75% of their time working in the warehouse, and spend the rest of their time at the computer at their desks in the office areas where managers and supervisors and an audit controller (not included in the unit) have their desks.

Inventory Manager Helen Allen supervises inventory control clerks Roper and Ward and the WRAPS clerks.

In the office upstairs (according to Shipping Office Coordinator Tony Hedgpeth), office clerical employees perform keypunching duties related to inventory control. These office employees have always been explicitly excluded from the unit. Although WRAPS clerks and inventory control clerks do or have done some keypunching, the record does not establish that this constitutes a significant part of their duties. The record does establish that both the inventory control clerks and the WRAPS clerks spend the majority of their working time in the warehouse as opposed to at their desks where the computer functions and keypunching functions must be performed.

The WRAPS clerks earn \$2 to \$4 dollars more per hour than the Inventory Control Clerks. The WRAPS employees work at desks in the area immediately outside the office area where Roper and Ward work, and in the warehouse itself, doing many of the same functions performed by Roper and Ward: keeping the computer records consonant with the goods in the warehouse, adjusting the records day-to-day to reflect goods coming in and goods going out, double-checking locations and amounts and ensuring the accuracy of records. Both the inventory control clerks and the WRAPS clerks use the WRAPS program and the WRAPS system. Also, the

Employer uses a system of “checks and balances” -- having counts and reports rechecked by someone else to ensure accuracy. For example, if a WRAPS clerk does the first count, an inventory control clerk does the re-count, and vice-versa.

The WRAPS clerks use “dummy” computer terminals at which they can input data. However, the WRAPS clerks cannot print reports or perform other functions performed by the two inventory control clerks and managers who have fully functioning computers and passwords allowing access to the other computer programs used by the Employer. Thus, the inventory control clerks operate a number of computer programs such as Access, Excel, Lotus Notes, Optica, On Demand, and SCRT, which the WRAPS clerks do not use. Because the WRAPS clerks do not have printers, the inventory control clerks and the supervisors print out reports needed by the WRAPS clerks. This is done three to five or more times per day for each WRAPS clerk.

Both the inventory control clerks and the WRAPS clerks work in the warehouse, including the freezer area. Both are expected to meet similar sets of physical requirements in order to perform their warehouse work, and both are issued freezer suits. Roper, Ward and the WRAPS clerks are the inventory control employees who regularly spend a significant amount of time in the warehouse. Both the inventory control clerks and the WRAPS clerks interact regularly with other warehouse employees who assist in such ways as moving pallets and locating product.

The WRAPS clerks are certified on forklift equipment. Some WRAPS clerks do more forklift work than others. The inventory control clerks are not certified on the forklift equipment.

Roper does some work rearranging aisles. Ward does not perform this work.

3. Applicable Legal Principles and Analysis

Where a new classification performs the same basic functions that a unit classification has historically performed, the new classification is properly viewed as belonging in the unit rather than being added to the unit by accretion. Developmental Disabilities Institute, Inc., 334 NLRB No. 143 (2001); Premcor, Inc., 333 NLRB No. 164 (2001). In Developmental Disabilities, the new position was not identical to the unit positions. Rather, the functions were similar, and the Board found that the new classification belonged in the unit, and that the accretion test need not be applied. The Board found that the new position clearly fell within the terms of the classification included in the unit description. Here, the work performed by Roper and Ward is warehouse inventory control work which has historically been included in the unit. Accordingly, Roper and Ward are included in the unit by virtue of the unit work that they perform.

Even if an accretion analysis were applied, the result in this case is the same. In The Sun, 329 NLRB 854 (1999), the majority held that

“if the new employees in question perform job functions similar to those performed by unit employees, as defined in the unit description, we will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work. Once the above standard has been met, the party seeking to exclude the employees has the burden to show that the new group is sufficiently dissimilar from the unit employees so that the existing unit, including the new group, is no longer appropriate.”

The dissent in The Sun stated that the Board should add employees to a bargaining unit only when the additional employees have little or no separate group identity and

when the additional employees share an overwhelming community of interest with the existing unit.

Here, Roper and Ward spend a majority of their time in the warehouse performing inventory control work under the same supervision as WRAPS clerks, and they deal with the record keeping function of inventory control as do WRAPS clerks. I find that the inventory control clerks have little or no separate group identity. Rather, they share an overwhelming community of interest with the WRAPS clerks to warrant their inclusion in the unit.

Thus, under either the majority or dissenting opinion tests set forth in The Sun, supra, the two inventory control clerks are included in the unit.

The Employer argues that the unit cannot be clarified to include Roper and Ward because the inventory control clerk position existed before the parties entered into their June 3, 2000 contract. It contends that when AWG operated the facility, Dana Maddox, who was excluded from the unit, had the title “inventory control clerk”. In June 2000, when the Employer took over the facility, Maddox was given the title “Audit Coordinator,” and was given a significant raise. Maddox’ duties have not changed since 1966.

Neither party contends that Maddox is now an inventory control clerk, and both parties appear to take the position that Maddox should be excluded from the unit. The record does not show that Maddox, who at all times has been excluded from the unit, has performed the same types of duties performed by Roper and Ward. The evidence does not establish that Maddox regularly spends the majority of his time in the warehouse. Further, the evidence does not show that Maddox shares a sufficient

community of interest with Roper, Ward, and the WRAPS clerks to support the conclusion that he should be included in the unit as an inventory control clerk.

The Employer contends that it has, for some time, assigned unit duties to non-unit personnel such as Brian Smith when Smith was first hired. It is not clear from the record what duties and responsibilities were given to Brian Smith when he was first hired. Smith soon became a manager. Before June 2000, the Petitioner perceived that Smith was brought in as a management intern and assigned a range of duties, including some unit work, for training purposes. A grievance was filed over this but was not resolved. The record does not establish whether Smith, Maddox, or anyone else held the same type of inventory control position held now by Roper and Ward. The record also does not establish that the Petitioner agreed to the reassignment of unit duties to non-unit employees or managers.

The Employer argues that, in one of the Petitioner's three unresolved grievances, the Petitioner objected to the assignment of unit work to office clerical employee Rhonda Powell. The record shows that Powell was truly an office clerical employee, not an inventory control clerk.

The Employer asserts that Roger Trent did not vote in the 1994 election in which inventory clerks voted for inclusion in the established warehouse and distribution unit. The record establishes that Trent is now a supervisor. The record does not establish what position Trent held during the critical period preceding the election, nor does it establish that the position Trent held in 1994 is similar to the position now held by Roper and Ward.

Generally, the Board will not clarify a unit defined by contract during the term of the contract to include an excluded position that was in existence before the contract was signed, because to do so would disrupt the bargaining relationship. However, where the parties did not agree to exclude the position in question during negotiations, where the contract does not explicitly exclude the position, and where the employer did not notify the union regarding the creation of the position, the Board can and should rule on the clarification. In Austin Cablevision, 279 NLRB 535, 536-37 (1986), where the union did not agree to the exclusion of the classification in question, the Board found that the disputed classification had not been purposely excluded and that it should be included in the unit. Here, the Employer did not notify or consult with the Petitioner before assigning unit work to Roper and Ward.

Mid-way through the hearing, the attorney for the Employer began referring to Roper and Ward as “Office Clerks”. Contrary to the Employer, the record fails to establish that inventory control clerks are office clerical employees. First, the record reveals no previous use of the title “office clerk” to refer to the positions held by Roper and Ward. The evidence shows that the positions occupied by Roper and Ward have at all times been called “inventory control clerks” and *not* office clerks. Second, the evidence establishes that the title “inventory control clerk” is fully descriptive of the functions of the position: although Roper and Ward spend a portion of their work time in the office, most of their work time is spent in the warehouse, their work functions are closely related to and overlap the work of the WRAPS clerks, and they have substantial interaction with WRAPS clerks. The duties and job requirements for the WRAPS clerks are very similar to the job description the Employer created to describe the duties

and job requirements of the inventory control clerk position. The record disclosed very little evidence of interaction by Roper and Ward with the clerical employees in the office.

The Employer argues that terms and conditions of employment of the inventory control clerks differ from those of the WRAPS clerks. The terms of the collective-bargaining agreement have not been applied to the inventory control clerks: Roper's and Ward's wages are lower (up to \$4 per hour lower than WRAPS clerks); Roper and Ward are eligible for raises from 0 to 8%, whereas unit employees receive 2% per year under the current contract; premium freezer pay earned by WRAPS clerks is not paid to inventory control clerks when they work in the freezer; inventory control clerks are not included in the union pension plan; inventory control clerks work overtime when their supervisor asks them to as opposed to the seniority bidding system for overtime used by the WRAPS clerks; and WRAPS clerks positions are filled by a seniority-based bidding system. WRAPS clerks work four 10 hour days including Saturday. Inventory control clerks work five 8 hour days including every other Saturday. Inventory control clerks are employed at will; WRAPS clerks can be terminated only for just cause.

Non-unit terms and conditions of employment apply to the inventory control clerks. They are subject to the rules set out in the Employee Handbook. They receive paid sick days, long-term disability benefits, some tuition reimbursement (up to \$2,500), birthday celebrations, and length of service awards. They participate in the company 401(k) plan. They receive 2 weeks vacation after 1 year (unit employees get 1 week after 1 year, 2 weeks after 3 years, 3 weeks after 8 years, 4 weeks after 15 years, and 5 weeks after 20 years).

Inventory control clerks share offices with management. WRAPS clerks' desks are in the cubicles outside the management offices. These two areas are about 10 feet apart. Inventory control clerks have telephones on their desks, their own voice mail, and can take personal phone calls as they choose. WRAPS clerks can take personal phone calls in an emergency only.

In addition, inventory control clerks wear business casual clothes (khakis and a shirt with a collar). WRAPS clerks are permitted to wear jeans or shorts if they choose. Inventory control clerks are permitted to park in the management parking lot and have passwords allowing them access into several computer systems not accessible to WRAPS clerks. Inventory control clerks' identification cards afford them swipe access to management offices, and inventory control clerks use the management break room (as opposed to the union break room). Inventory control clerks were required to sign a non-compete agreement when they were hired. Inventory control clerks attend different staff meetings from WRAPS clerks.

I find that the above disparities are, in the main, reflections of the differences which arise as a result of the WRAPS clerks' representation by the Petitioner and their being covered by a collective-bargaining agreement.

4. Conclusion

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The petition is granted insofar as it seeks to clarify that the inventory control clerks are included in the existing unit.

ORDER

IT IS ORDERED that the petition herein be, and it hereby is, granted to clarify that the inventory control clerks are included in the unit.

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, Office of the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by May 13, 2003. The request may not be filed by facsimile.

Dated: April 29, 2003

(SEAL)

/s/ F. Rozier Sharp

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